IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 216.

STATE OF OHIO, EX REL. CALVIN BEVIS,
Petitioner,

vs.

GEORGE L. COFFINBERRY, RICHARD W. MORSE AND WILL T. BLAKE, AS MEMBERS OF THE INDUSTRIAL COMMISSION OF OHIO,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

The opinion of the court below was officially reported in 151 Ohio State, 293.

Petitioner invokes the jurisdiction of this court to review the question herein presented under Section 237 (b) of the Judicial Code of the United States as amended (28 U. S. C., 344).

STATEMENT OF THE CASE.

This is an action in mandamus in the Supreme Court of the state of Ohio in which Calvin Bevis, as claimant in a matter pending before the Industrial Commission of the state of Ohio, filed his petition (R., 2, 3, 4, 5, 6) in that court asking for a writ of mandamus directing these respondents, as members of the Industrial Commission of Ohio, to allow his application for additional compensation beyond the date of last payment and award compensation for permanent total disability caused by silicosis.

On demurrer the petition was dismissed by said Supreme Court, and application for rehearing denied (R., 2).

QUESTIONS PRESENTED.

1. Does a denial by the Supreme Court of Ohio of a writ of mandamus which does not question the validity of Section 1465-68a, pars. 22 and 23 of the General Code of Ohio but merely seeks to compel respondents to determine a question of fact in favor of petitioner, challenging only the "decision" of respondents as to the compensability of the claim in question, properly raise a substantial federal question whereby this court may take jurisdiction on petition for a writ of certiorari?

2. Is the denial of an application for additional compensation by the Industrial Commission of Ohio and the subsequent refusal of the Supreme Court of Ohio to require the Industrial Commission to revoke such denial a deprivation of petitioner's right to a fair hearing as guaranteed him by the Fourteenth Amendment to the Constitution of the United States?

LAW AND ARGUMENT.

I. Denial of a writ of mandamus by the Supreme Court of Ohio, which writ seeks to compel the Industrial Commission of Ohio to determine a fact question in favor of petitioner and does not challenge the validity of Section 1465-68a, pars. 22 and 23 of the Ohio General Code does not properly raise a substantial federal question so as to enable petitioner to invoke the jurisdiction of the Supreme Court of the United States to review the decision on petition for writ of certiorari.

(A) The Very Basis of Petitioner's Claim For Compensation For Occupational Disease is the Validity of Section 1465-68a of the General Code of Ohio.

The creation of the Industrial Commission of Ohio and the authority vested in said Industrial Commission is found in Article II, Section 35, of the Constitution of the state of Ohio which reads as follows:

> For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith,

shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto. Such board shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, and so as to equalize, in so far as possible, the burden thereof, to be expended by such board in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases. Such board shall have full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employes, enacted by the General Assembly or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease or death resulted because of such failure by the employer, such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law, shall be added by the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and

paid in like manner as other awards; and, if such compensation is paid from the state fund, the premium of such employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the state fund in the amount of such additional award, notwithstanding any and all other provisions in this constitution.

(As amended. Effective Jan. 1, 1924. 110 O. L., 631.)

There was no common law right of action for such occupational disease in Ohio except as the result of the employer's negligence; and there was no statutory provision for claims or rights of action in Ohio for occupational disease prior to the enactment of Section 1465-68a of the General Code of Ohio.

Renkel v. Industrial Commission, 109 O. S., 152;
Industrial Commission v. Brown, 92 O. S., 309;
Industrial Commission v. Cross, 104 O. S., 561;
Industrial Commission v. Roth, 98 O. S., 34.

(B) The Question of Constitutionality Was Not Raised in a Proper Proceeding in the Supreme Court of Ohio.

Petitioner sought by mandamus to compel respondents to determine a question of fact in favor of petitioner, challenging only the "decision" of the respondents with respect to the compensability of the claim in question.

Thus, the prayer of the petitioner before the Supreme Court of Ohio was (R., 6):

"Wherefore, the relator prays for a writ **directing** the Industrial Commission to **allow** relator's application for additional compensation beyond the date of last payment and **award** relator compensation for permanent total disability caused by silicosis. * * *" (Emphasis added.)

Judge Matthias, in rendering the opinion for the Supreme Court of the state of Ohio said (R., 15):

> "The question presented to this court by the facts alleged in the petition involves the determination of a purely medical question of fact. The determination of such a question as the relator presents here, that is whether the complicating diseases of pulmonary emphysema and asthmatic bronchitis were caused by the silicosis condition, is so clearly a question of fact that the granting of a writ by this court would be in effect a requirement that the industrial commission determine a question of fact in the manner in which this court believes it should have been found and determined. It is clear that there was a positive difference of opinion between the medical authorities constituting the silicosis referees and the medical board of review of the industrial commission on the one hand and the physicians who examined the relator on the other. In such a situation the relator obviously does not show a clear right to relief by way of mandamus and under the well established rule such a writ will not issue."

II. The denial of an application for additional compensation by the Industrial Commission of Ohio and the subsequent refusal of the Supreme Court of Ohio to require the Industrial Commission to revoke such denial is not a deprivation of petitioner's right to a fair hearing as guaranteed him by the Fourteenth Amendment to the Constitution of the United States.

To what extent the Fourteenth Amendment operates to restrict the constitutionality of legislative policies of the states has been the subject of wide discussion in the various courts throughout the country. However, there has been no attempt by the various courts to define in a few words what is meant by the term "due process of

law". Cooley in his "Constitutional Limitations, 8th Ed. (page 741), defines it as follows:

> "Due process of law in each particular case means, such execution of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights."

In Walker v. Sauvinet, 92 U. S., 90, the court, at page 93, stated:

> "Due process of law is process according to the law of the land. This process in the state is regulated by the state."

In the case of Reetz v. Michigan, 188 U. S., 505, the court held:

> "There is no provision in the federal Constitution forbidding the state from granting to a tribunal, * * * the final determination of a legal question. Due process of law is not necessarily judicial process."

While the Industrial Commission of Ohio belongs to the administrative branch of the state government it has, under the authority vested in it by Section 35 of Article II of the Constitution of Ohio, many of the attributes of a court of justice, and exercises, in the administration of the workmen's compensation system, a quasi-judicial power. It is composed of three members, who are constantly engaged in hearings, the taking of testimony, listening to arguments and reading briefs of counsel, rendering judgments, styled awards, and writing opinions. It is a tribunal of vast importance to the people of the state.

In the case of Hurtado v. People of California, 110 U. S., 516, Mr. Justice Matthews, after an exhaustive re-

view of the authorities on the subject of due process of law, stated at page 535:

> "Due process of law in the latter refers to that law of the land, which derives its authority from the legislative powers conferred upon Congress by the Constitution of the United States, exercised within the limits therein prescribed, and interpreted according to the principles of the common law. In the Fourteenth Amendment, by parity of reason, it refers to that law of the land in each state, which derives its authority from the inherent and reserved powers of the state, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all of our civil and political institutions, and the greatest security for which resides in the right of the people to make their own laws, and alter them at their pleasure. 'The Fourteenth Amendment,' as was said by Mr. Justice Bradley in Mo. v. Lewis (supra), 'does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. * * *'"

CONCLUSION.

It results from the rules announced in the foregoing authorities, to the facts appearing on the record in the case at bar, that petitioner has failed to raise a substantial federal question and has not shown any denial of due process.

Respectfully submitted,

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